

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
SHERMAN DIVISION**

JASON LEE VAN DYKE
Plaintiff

v.

THOMAS CHRISTOPHER RETZLAFF
a/k/a Dean Anderson d/b/a BV Files, Via
View Files L.L.C., and ViaView Files
Defendant

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Case No. 4:18cv247

PLAINTIFF’S RENEWED MOTION TO LIFT STAY

I. INTRODUCTION

Plaintiff, Jason Lee Van Dyke (“Plaintiff” or “Van Dyke”) respectfully renews his motion to lift the stay imposed in this case on July 31, 2018 in light of the ruling of the 5th Circuit Court of Appeals in *Klocke v. University of Texas-Arlington* on August 23, 3019.

II. FACTS

On July 24, 2018, this Court denied Defendant’s motion to dismiss this action pursuant to the Texas Citizens Participation Act (“TCPA”). This basis of this Court’s ruling was that, regardless of whether the statute is procedural or substantive, the TCPA does not apply in federal courts sitting in diversity jurisdiction. Defendant timely filed a notice of appeal in this cause together with what, at the time, was an unopposed motion to stay proceedings in this case. This Court entered an order on July 31, 2018 staying proceedings in this case.

On July 8, 2019, Plaintiff filed a motion to lift the stay in this case, a motion to withdraw his previous motion for court ordered dismissal, and a motion to amend his

pleadings to allege new causes of action against Defendant. The basis for all of these motions was simple: this case involves ongoing tortious conduct by Defendant against Plaintiff and, during the pendency of the stay in this case, Defendant has abused the stay imposed by this Court and engaged in additional tortious conduct against Plaintiff. This Court has not ruled on any of Plaintiff's motions.

On August 23, 2019, the 5th Circuit Court of Appeals rendered its decision in *Klocke v. University of Texas-Arlington*. In that case, the 5th Circuit held that the TCPA does not apply in federal courts sitting in diversity jurisdiction. A copy of the 5th Circuit's opinion in *Klocke* is attached hereto as Exhibit "A" and incorporated by reference herein.

III. ARGUMENT

There is no reason to continue any sort of delay in this case because the 5th Circuit has decided the issue of the applicability of the TCPA in federal court. The issues in *Klocke* were the same as those submitted to the 5th Circuit in this case. Plaintiff's lawsuit seeks to hold a notorious stalker accountable for an ongoing pattern of tortious conduct committed against Plaintiff for over two years. Defendant's conduct has resulted in the complete destruction of Plaintiff's career and has decimated any realistic hope of Plaintiff ever becoming gainfully employed again. Plaintiff opposes any further delay of this case for proposed *en banc* proceedings before the 5th Circuit or for the consideration of a writ of certiorari by the U.S. Supreme Court. It is already well past the time to hold Defendant accountable for his behavior, and any further delay would result in prejudice to Plaintiff.

IV. PRAYER

WHEREFORE, premises considered, Plaintiff prays that this Honorable Court enter an order immediately lifting the stay in this case and setting the same for a scheduling conference so that discovery may proceed and this case may be set for trial.

Respectfully submitted,

/s/ Jason Lee Van Dyke

Jason L. Van Dyke

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CERTIFICATE OF CONFERENCE

I certify that, on multiple occasions prior to 8-23-2019, I e-mailed Jeffrey Dorrell to confer with him concerning the foregoing motion. Mr. Dorrell informed me that he is opposed to the relief requested.

/s/ Jason Lee Van Dyke

JASON LEE VAN DYKE

CERTIFICATE OF SERVICE

I certify that a true and correct copy of the foregoing was electronically filed on the CM/ECF System, which will automatically serve a Notice of Electronic Filing on Jeffrey Dorrell, Attorney for Defendant.

/s/ Jason Lee Van Dyke

JASON LEE VAN DYKE